

## Message Text

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45

ACTION EB-07

INFO OCT-01 ARA-06 ISO-00 CAB-02 CIAE-00 COME-00 DODE-00

DOTE-00 INR-07 NSAE-00 FAA-00 L-03 SS-15 NSC-05 PA-01

PRS-01 USIA-06 FEA-00 /054 W

----- 061199

R 301300Z DEC 75

FM AMEMBASSY BRASILIA

TO SECSTATE WASHDC 3133

INFO AMCONSUL RIO DE JANEIRO

AMCONSUL SAO PAULO

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E.O. 11652: N/A

TAGS: EAIR; BR; US

SUBJECT: DIPLOMATIC NOTE ON FUEL TAX FOR CHARTER AIRLINES

REF: STATE 290454

1. EMBASSY SUGGESTS THAT SUBJECT NOTE REFLECT MORE CLOSELY TALKING PAPER LEFT WITH DAC DURING BILATERAL TALKS, STRESSING LEGAL AND POLICY ASPECTS OF PROBLEM FOR USG. THIS WOULD BE HELPFUL IN CONGEN RIO'S CONTINUING EFFORTS AT WORKING LEVEL WITH DAC, WHICH RECENTLY UNDERWENT CHANGE OF COMMAND, TO OBTAIN RESOLUTION OF THIS PROBLEM. AS DEPARTMENT IS AWARE, HOWEVER, NO VERY PROMPT

ACTION ON BRAZILIAN SIDE IS LIKELY BECAUSE FUEL TAX EXEMPTION REQUIRES CHANGE IN BRAZILIAN LAW, NOT MERELY DAC ADMINISTRATIVE RULING, AND WILL INVOLVE INTER-MINISTERIAL CONSENSUS.

2. FOLLOWING IS EMBASSY'S PROPOSED REVISED NOTE:

BEGIN TEXT: THE EMBASSY OF THE UNITED STATES OF AMERICA PRESENTS ITS COMPLIMENTS TO THE MINISTRY OF EXTERNAL RELATIONS AND HAS THE HONOR TO REFER TO THE PAPER ENTITLED "US-BRAZILIAN CHARTER AIR SERVICES" WHICH WAS PRESENTED TO THE DEPARTAMENTO

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DE AVIACAO CIVIL ON NOVEMBER 5, 1975, BY THE US DELEGATION

TO THE BILATERAL US-BRAZIL CIVIL AIR TALKS, AND WHICH DESCRIBES THE POSITION OF THE US GOVERNMENT ON THE FUEL TAX CURRENTLY LEVIED BY THE GOVERNMENT OF BRAZIL ON US CHARTER AIRLINE FLIGHTS.

THE EMBASSY WISHES TO CONFIRM TO THE MINISTRY THE US GOVERNMENT'S CONTINUING CONCERN OVER THE IMPOSITION OF THIS TAX AND THE IMPORTANT LEGAL AND POLICY ASPECTS OF THIS PROBLEM WHICH, FROM THE US VIEWPOINT, ARE INVOLVED IN THIS ISSUE.

WITH REGARD TO THE LEGAL ASPECTS, AS NOTED BY THE US DELEGATION DURING THE TALKS, UNDER US LAW FOREIGN AIRCRAFT MAY BE EXEMPTED FROM PAYMENT OF FUEL TAXES IF THE FOREIGN COUNTRY GRANTS RECIPROCITY. THE US SECRETARY OF COMMERCE ISSUED A FINDING SOME 20 YEARS AGO THAT SUCH RECIPROCITY EXISTS IN THE CASE OF BRAZIL. CONSEQUENTLY, ALL BRAZILIAN-REGISTERED AIRCRAFT, WHETHER OPERATED BY BRAZILIAN AIRLINES OR BY PRIVATE OWNERS, AND WHETHER THE SERVICES ARE SCHEDULED OR CHARTER OR PRIVATE, ARE EXEMPT FROM FUEL TAXES. HOWEVER, THE RECENT KNOWLEDGE THAT US CHARTER-ONLY AIRLINES ARE NOT GIVEN FUEL TAX EXEMPTION IN BRAZIL HAS CALLED THE EARLIER FINDING OF RECIPROCITY INTO QUESTION. IN THIS CONNECTION THE US GOVERNMENT NOTES THAT ARTICLE 8 OF BRAZILIAN LAW 1.815 OF FEBRUARY 18, 1963, ALSO APPEARS TO MAKE NO DISTINCTION AMONG AIRLINES OF A GIVEN COUNTRY.

SECONDLY, AS ALSO STRESSED BY THE US DELEGATION, THE EMBASSY WISHES TO NOTE THAT ALTHOUGH THE US HAS A SEPARATE CLASS OF AIRLINES WHICH ARE AUTHORIZED TO PERFORM CHARTER SERVICES ONLY, THE US GOVERNMENT BELIEVES THAT ANY CONTROLS WHICH MAY BE FELT TO BE NECESSARY SHOULD BE DIRECTED TOWARD THE SERVICE PERFORMED, RATHER THAN TOWARD THE TYPE OF AIRLINE PERFORMING THE SERVICE. THE US DOES NOT DISTINGUISH, THEREFORE, FROM THE POLICY VIEWPOINT, BETWEEN CHARTER SERVICES PERFORMED BY CHARTER AIRLINES OR BY SCHEDULED AIRLINES WHICH MAY ALSO PERFORM CHARTER SERVICES.

THE US APPRECIATES AND SHARES BRAZIL'S CONQCERN FOR

ENSURING THAT SCHEDULED AIRLINES NOT SUFFER AN UNFAIR LIMITED OFFICIAL USE

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DISADVANTAGE FROM THE OPERATIONS OF CHARTER AIRLINES. HOWEVER, WE HOPE THAT THE GOVERNMENT OF BRAZIL ALSO SHARES THE VIEW THAT EACH COUNTRY'S AIRLINES, SCHEDULED OR CHARTER, SHOULD HAVE A FAIR AND EQUAL OPPORTUNITY TO COMPETE FOR CHARTER TRAFFIC.

THE US GOVERNMENT HOPES THAT THE GOVERNMENT OF BRAZIL WILL ACT PROMPTLY IN THIS MATTER WO THAT FULL RECIPROCITY

MAY BE RESTORED, AND SO THAT THE SECRETARY OF COMMERCE NEED  
NOT RECONSIDER, IN ACCORDANCE WITH US LAW, HIS EARLIER  
FINDING WITH RESPECT TO THE EXISTENCE OF RECIPROCITY.

IN THIS CONNECTION, THE EMBASSY ALSO WISHES TO REQUEST  
THAT THE BRAZILIAN GOVERNMENT GIVE CONSIDERATION  
TO THE CASE, PUT FORWARD BY AT LEAST ONE US CHARTER  
AIRLINE, FOR REIMBURSEMENT OF THOSE FUEL TAXES PREVIOUSLY  
COLLECTED.

(COMPLEMENTARY CLOSE.) END TEXT.

3. REQUEST DEPARTMENT'S CONCURRENCE FOR PRESENTATION OF  
ABOVE NOTE.  
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